ESTATE OF WILLIAM MASON CULTEE

IBIA 80-43 Decided July 27, 1981

Appeal from order by Administrative Law Judge Robert C. Snashall approving Indian will.

Affirmed.

1. Indian Probate: Wills: Children, Disinheritance of--Indian Probate: Wills: Mistake of Fact or Law

   Indian testator's statement that he was a single man having no children was not proof of an insane delusion so as to invalidate his Indian will where decedent had often denied paternity of appellant children and refused support and where the witnesses to the will agreed that testator was competent, knew the nature and extent of his property, and had dictated the terms of the will according to his own expressed desires.

2. Indian Probate: Wills: Testamentary Capacity: Alcohol--Indian Probate: Wills: Testamentary Capacity: Witnesses' Testimony

   Evidence tending to show that decedent was given to periodic excessive drinking which affected a chronic heart ailment is insufficient to show that his competence to execute a valid will was affected, where testimony of witnesses establishes he was otherwise competent to manage his affairs, was a prudent money manager and concerned about the devolution of his trust property.

3. Indian Probate: Wills: Undue Influence

Evidence tending to show that appellee attempted to control decedent's drinking habits, provided him with a place to stay, and gave him some assistance in dealings with the Bureau of Indian Affairs is insufficient to establish an attempt by appellee to exert undue influence upon decedent in order to obtain a devise of his trust property. An inference of undue influence is not available to persons contesting Indian wills; to establish undue influence in Indian probate matters, the misconduct sought to be established must be proved.

4.-5. Indian Probate: Wills: Failure to Mention Child--Indian Probate: Wills: Unnatural Will

A Bureau of Indian Affairs instruction to will drafters which requires children to be mentioned in wills prepared by the agency is merely an administrative guide, and is not binding upon a testator who wishes to ignore the instruction or disinherit his children.

APPEARANCES: Mason D. Morisset, Esq., for appellants Susan Lee Cultee, Deborah Cultee, Karen Cultee, and Brenda Lee Cultee; Mary Anne Vance, Esq., for appellee Helene Jake.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On August 4, 1976, decedent William Mason Cultee died leaving a will dated August 14, 1973, in which he declared "as of the date of this instrument, I am a single person; and that I have no children." Decedent's will devised his entire trust estate to his cousin, appellee Helene Jake. On February 21, 1980, an order was entered approving the will. Under the terms of the order, decedent's trust property located on the Quinault Reservation passes to appellee, who, like decedent, is a member of the Quinault Tribe, a tribe organized under the Indian Reorganization Act of 1934 (IRA). 1/ Since decedent also owned property on the Nisqually and Puyallup Reservations, both also IRA reservations, his will was ineffective to devise those properties to appellee, who is not a qualified devisee of property located on reservations organized

1/ Act of June 18, 1934, 48 Stat. 985, 25 U.S.C. § 464 (1976).

under the IRA where she is neither an heir of decedent nor a member of the tribe exercising jurisdiction over the reservation. 2/

The Administrative Law Judge found that Susan Lee Cultee, Deborah Cultee, Karen Cultee, and Brenda Lee Cultee, the appellants, were the natural children of decedent and Shirly Beatty, a woman with whom decedent had cohabited. Based upon that finding, he determined that appellants, as heirs of decedent, should inherit the Puyallup and Nisqually trust properties. Appellants petitioned for a rehearing of that part of the February 21 order which approved the devise of the Quinault trust property to appellee. On May 1, 1980, a rehearing was denied, and appeal was taken from the order of denial, alleging five errors by the Administrative Law Judge in his order approving will and determining inheritance.

On appeal appellants contend that: (1) Decedent suffered from alcoholism which had reduced his mental capacity to the point where he was incompetent to make a will; (2) decedent suffered from an insane delusion that he had no children; therefore, he did not know the natural recipients of his bounty and was not competent to make a will; (3) decedent made his will under the undue influence of appellee and it was therefore not his own will that he expressed when he devised his trust estate to her; (4) the will violated Departmental directives and should therefore be denied probate by the Department; and (5) the circumstances of the testamentary act require the intervention of the Secretary, under the holding in Tooahnippah v. Hickel, 3/ to rewrite the will to conform to conventional patterns of conduct to be expected of rational testators in situations similar to that of decedent.

[1] Appellants' second contention--that decedent's assertion he had no children was an insane delusion--is the focal point of appellants' case before this Board. Thus, although not explicitly stated by appellants, the thrust of their other arguments depends upon this thesis for support. This main contention expounds the assumption that decedent's alcoholism and refusal to recognize his children demonstrate his lack of testamentary capacity.

The record indicates that decedent was married to Iva Bush in 1945 and remained married to her until his death. A child of this

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2/ Once adopted by a tribe exercising jurisdiction over a designated reservation, section 4 of the Act prior to amendment in 1980, restricted beneficiaries of Indian wills to persons who were heirs at law of the testator or tribal members. Under this classification, appellee was not eligible to inherit the Puyallup and Nisqually properties. Decedent's children, however, would have been eligible to receive any of the properties. See Estate of Willessi, 8 IBIA 295, 309-10, 88 I.D. 561 (1981).

3/ 397 U.S. 598 (1970).

marriage born in 1946 died in 1965. Beginning in 1953, decedent cohabited with Shirly Beatty, the mother of appellants. Decedent and Shirly Beatty never married. From 1955 to 1957 decedent was confined at Monroe, Washington, in the state reformatory. Mrs. Beatty testified that although she was married to another man a year before the birth of the youngest appellant in 1960, all four appellants were the natural children of decedent. BIA financial records indicate that while decedent authorized several small payments on behalf of appellants from agency trust funds, he did not expressly acknowledge that any of the four children of Mrs. Beatty were his children. Several documents signed by decedent, however, contain indirect admissions of paternity as to some of the appellants. The Administrative Law Judge found that appellants were the natural children of decedent based upon the circumstances presented by the evidence of record, despite the consistent statements by decedent that he had no children except for the daughter who had died.

In so doing, the Administrative Law Judge determined that despite his ruling that decedent's will was valid, the lapse of the testamentary devise of the Puyallup and Nisqually properties caused by operation of the IRA made necessary a finding concerning the heirs of decedent. 4/ The Administrative Law Judge correctly determined appellants to be decedent's children, and, although illegitimate, entitled to share in all decedent's non-Quinault property pursuant to 25 U.S.C. § 371 (1976). As to the determination that Iva Bush is not a heir of decedent, it is noted that she had notice of the hearing, appeared, and has not appealed from the determination that her marriage to decedent terminated before his death. The decision below, after considering the evidence, held appellants had failed to sustain the burden of proving their contentions concerning decedent's claimed incompetence 5/ for the reason:

> [T]here is a difference between an insane delusion and a false belief. An insane delusion is much more than a mere delusion of fact. Where a belief is arrived at through a process of reasoning, even though such reasoning may be regarded by others as faulty or illogical, if the belief is not so contrary to reason that none but a person of an unsound mind can entertain it, it is not such a delusion as may be deemed an insane delusion. Here, as indicated,

4/ See Estate of Edge, 7 IBIA 53, 56 (1978).

5/ Testamentary capacity for purposes of Indian probate is defined consistently with general American jurisprudence, as the requisite mental capacity an Indian testator must possess, including the ability to remember the nature and extent of his property, to recognize the natural objects of his bounty, and to understand the nature of the testamentary act. Estate of Red Eagle, 4 IBIA 52, 82 I.D. 256 (1975).

> there is no explanation whatsoever as to the basis of testator's beliefs. Under the circumstances, it is just as reasonable to believe, and in view of the other evidence produced in support of his competency, perhaps more reasonable to presume, that his beliefs were the result of conscious and deliberate planning. [Citations omitted.]

Order dated February 21, 1980, at 4.

The whole difficulty with appellants' contention concerning the cause for decedent's denials of paternity is, of course, that there is an obvious and common explanation for his refusal to recognize the children which is explicit in his refusal to authorize regular direct payments to them from his trust funds and his unwillingness to pay regular support payments for them to their mother. 6/ Since all witnesses agree decedent was otherwise competent, alert, and interested in himself, his community, and the preservation of his Indian heritage through the prudent transfer of his trust property, it must be concluded that his attitude towards appellants did not derive from mental incapacity.

In Attocknie v. Udall, 261 F. Supp. 876 (W.D. Okla. 1966), 390 F.2d 636 (10th Cir. 1968), cert. denied, 393 U.S. 833 (1968) (a case subsequently ordered dismissed for the reason there was no appeal permitted from the agency's administrative decision), the Oklahoma District Court held in a situation similar to that presented in this appeal that an affirmative denial of paternity by a putative father of an illegitimate child is not evidence of the existence of an insane delusion. The deceased, a Comanche Indian, denied that a named individual was his son and left him nothing in his will. The putative son contested the validity of the will alleging that testator was suffering from an insane delusion at the time of the testamentary act because he denied the contesting party was the testator's natural child.

The evidence in Attocknie demonstrated that the will was a valid instrument, executed by a competent testator. The hearing examiner held the evidence regarding lack of mental capacity and possible undue influence to be insufficient. Although the hearing examiner determined the contesting party was in fact an illegitimate son, the examiner found that the testator was not suffering from an insane delusion because he stated the contesting party was not his son. The court, quoting from the hearing examiner's opinion, said:

> [A]n insane delusion is not merely an erroneous belief. The belief must not only be wrong, it must be unreasonable. It

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6/ Fathers of illegitimates may reasonably be presumed to avoid admitting parenthood. Estate of Cottonwood, 7 IBIA 138 (1979); Estate of Quapaw, 4 IBIA 263 (1975). See Attocknie v. Udall, 261 F. Supp. 876 (W.D. Okla. 1966), 390 F.2d 636 (10th Cir. 1968), cert. denied, 393 U.S. 833 (1968).

> must defy rational explanation or justification. Stated another way an insane delusion must be such that only a person with a deranged or abnormal mind would believe that the "insane delusion" represented the truth or was correct.

261 F. Supp at 882.

As in the present case, the examiner in Attocknie found that the decedent could have reasonably believed he had no children, but was free to change his belief, stating:

> [T]he decedent was free to change his views any number of times on this paternity question for a multitude of reasons which would be plausible, reasonable and understandable . . . Under the circumstances the petitioner has failed to prove the first basic element of an "insane delusion". He has failed to establish a false belief. When, as in this case, there is good reason for an honest difference of opinion on facts that are extremely difficult to establish, no single conclusion by any one person is sufficient to hold the opposing views are "false". There are numerable reasons which are logical, understandable, and sensible for the testator's belief as to the paternity of Willis Attocknie, Sr. If, as indicated above, the petitioner has completely failed to prove that the testator's belief was false, there seems to be no useful purpose in exploring the possibility that it was the product of an unsound mind. There is no other evidence whatsoever of lack of mental capacity to make a Will at the time this instrument was executed. The evidence taken in its entirety fails to even suggest mental abnormality or an insane delusion.

261 F. Supp. at 882.

The court held that the testator was not suffering from an insane delusion at the time of execution of the will because no one could be "absolutely certain" concerning the identity of the father, since the mother was not married to the decedent:

> The examiner's finding as to the paternity of a child born out of wedlock creates no presumption that such conclusion is either correct or is universally shared or that it was shared by the putative father. Under such circumstances there always exists some element of doubt.

261 F. Supp. at 883.

Even though the Administrative Law Judge found the four appellants to be the natural children of decedent, it was neither unreasonable nor an apparent act of insanity on the part of decedent to deny paternity.

[2] Concerning the claim that drunkenness had made decedent incompetent, the record indicates that decedent used his trust money in a prudent manner; he did not spend the money in amounts exceeding his budgeted payments, and there is no indication that he spent unusual amounts of money for drinking. The recorded testimony tends to indicate that he was given to sporadic excesses. The testimony of a man who supervised decedent at work for 8 months indicates that he did not drink at all, much of the time. Decedent suffered from a heart condition that was aggravated by alcohol. On several occasions when he had drunk to excess he was hospitalized for heart failure. The evidence upon which appellants rely to show that decedent was affected by alcoholism appears in several medical reports which note that he was hospitalized following a drinking bout which resulted in an aggravation of his heart condition. Nothing in the reports indicates that decedent's mental faculties were permanently affected by drinking, although it is clear that his heart was so weak it could not withstand alcoholic intoxication.

The testimony of record also indicates that decedent's obvious demeanor was affected by a chronic ear ailment which affected his balance and tended to give him the appearance of drunkenness. There is no showing that he was under the influence of alcohol or anything else at the time he made his will. There is every indication that his will was the result of careful planning after consultation with his friends and those he considered to be his immediate family. There is inadequate evidence to prove lack of testamentary capacity by virtue of excessive drinking in the record presented. 7/

[3] In part, reliance upon the contention that decedent was incapacitated by drinking is also incorporated into the arguments concerning

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7/ For a discussion of the effect of demonstrated extreme alcoholism on the ability of an Indian testator to disinherit his wife, see Estate of John J. Akers, IA-D-18 (Supp.) (Sept. 23, 1968)); Estate of John J. Akers, 1 IBIA 8, 77 I.D. 268 (1970); Estate of John J. Akers, 1 IBIA 246, 79 I.D. 404 (1972); Akers v. Morton, 333 F. Supp. 184 (D. Mont. 1971), aff'd, in Akers v. Morton, 499 F.2d 44 (9th Cir. 1974), cert. denied, 423 U.S. 831 (1975); Estate of John J. Akers, 3 IBIA 300, 82 I.D. 108 (1975). (In Akers the examiner held valid a husband's will disinheriting his wife and ruled that the wife had no dower interests in trust lands purchased with the wife's funds. The Federal courts upheld the 1967 hearing examiner's decision observing however that, in addition to providing the purchase money, the wife had managed the trust lands without her husband's help during the last several years of his life, since the husband was a chronic alcoholic. The court of appeals' opinion noted that the case was the result of a coincidence of two prior cases which created a legal condition where "an Indian's devise of restricted lands is less restricted than an Indian's (or a non-Indian's) devise of any other realty. He or she can will that property free from any state law designed to protect a surviving spouse, and there is no Federal law that fills the state law gap.")

appellee's influence over decedent. Curiously, however, the testimony of the witnesses concerning this aspect of the case indicates that Mrs. Jake sought to influence decedent to quit or moderate his drunken sprees because of the apparent effect they had on his health. She did not drink with him. She actively discouraged him from drinking in her house. There is no indication that she prevailed upon him to devise his trust property to her. There is abundant testimony to indicate however that decedent felt that such a disposition of his trust assets was in his best interest and was consistent with traditional tribal values which he accepted. Although decedent was living at the Jake house shortly before his death, that fact and the opportunities it implies are insufficient to raise an inference of undue influence in Indian will cases. 8/

Similarly, appellee's comments concerning appellants' paternity appear to reflect a report of statements made to her by decedent in which he persisted in a denial of fatherhood: it is conceivable that she took these denials at face value. Appellee's conduct in assisting decedent with some of his contacts with BIA in preparation for the will execution was satisfactorily explained. There is no showing of actual misconduct sufficient to support the contention made. Undue influence was not proved and cannot be inferred from the circumstances of record.

[4] Since Tooahnippah v. Hickel, cited above, it has been clear that a will executed in conformity to Departmental regulation is valid, absent proof of the successful imposition of the will of another upon the Indian testator. 9/ The Departmental regulations which apply to Indian wills are those appearing at 43 CFR 4.260-4.262 (1980). Nothing in the regulations requires that an Indian testator mention his children or provide for them, whether legitimate or not. 10/ The contention that decedent's will fails to conform to Departmental standards for Indian wills is without merit; the will was executed by decedent before two disinterested witnesses in conformity to 43 CFR 4.260(a). Under the circumstances, nothing more was required. 11/

8/ The line of cases establishing the four-part test in Indian probate will cases noted by the Administrative Law Judge at page 3 of his Feb. 21, 1980, order has eliminated the presumption appellants rely upon to support their contentions concerning undue influence. Estate of Caddo, 7 IBIA 286, 291 (1979); Estate of Robedeaux, 1 IBIA 106, 78 I.D. 234 (1971).

9/ Estate of Hale, 8 IBIA 8, 11, 87 I.D. 64, 66 (1980).

10/ Lack of such regulations was noted in the concurring opinion in Tooahnippah v. Hickel at 619 n.10.

11/ Appellants rely upon a Bureau of Indian Affairs (BIA) "instruction" which recites: "If a husband, wife, child or grandchild who is an heir is given nothing, the reason must be set out." The origin of this "instruction" is not known; as noted by the decision below at 2 n.3,

[5] Finally, appellants rely upon the concurring opinion in Tooahnippah v. Hickel for the proposition that decedent should not be allowed to disinherit his children as a matter of public policy, seizing upon Justice Harlan's dictum at 397 U.S. 619 that the Secretary ought to be able to disapprove a will "if the disinheritance can be fairly said to be the product of inadvertence." The finder of fact below, however, found that the action of the testator was deliberate in this case. 12/ The record supports his finding conclusively.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the order approving will issued February 21, 1980, is affirmed.

This decision is final for the Department.

Franklin D. Arness
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge

fn. 11 (continued)
order of Feb. 21, 1980, the instruction is not a Departmental regulation. The instruction was, however, followed by agency employees in this case, as is explained by the testimony of the witnesses Walezak and Tudlock who explained they were aware of the instruction and questioned decedent about his children. Following his denial of paternity (consistent with his prior conduct in this regard), the denial was inserted into his will in an attempt to comply with the instruction concerning omitted heirs. It thus appears that the BIA instruction is itself the explanation for the statement concerning children which appears in the will.

12/ The desirability of more explicit regulations in this area has, as appellants point out, been noted by the United States Supreme Court and other Federal courts. (See Akers v. Morton, cited in n.7.) Until Secretarial action is taken to provide further regulation of this area, however, neither this Board nor the courts can presume to dictate policy in this area. (Earlier regulations were more explicit. For a discussion of the problems arising under the former regulations see Hanson v. Hoffman, 113 F.2d 780, 788 (10 Cir. 1940).)